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BEFORE THE
PHYSICIAN ASSISTANT BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 950-2015-000693

DAN GERARDO RAPHAEL, P.A.
11502 Wasco Road
Garden Grove, CA 92841

A C C U S A T I O N

Physician's Assistant Certificate No.
PA-18785

Respondent.

Complainant alleges:

PARTIES

1. Maureen L. Forsyth (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs.

2. On or about December 14, 2006, the Physician Assistant Board issued Physician's Assistant Certificate No. PA-18785 to Dan Gerardo Raphael, P.A. (Respondent). The Physician's Assistant Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2018, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physician Assistant Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3527 of the Code states, in pertinent part:

“(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

“(b) The board may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, an approved program after a hearing as required in Section 3528 for a violation of this chapter or the regulations adopted pursuant thereto.

“(c) The Medical Board of California may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

“...”

5. Section 3528 of the Code states:

“Any proceedings involving the denial, suspension or revocation of the application for licensure or the license of a physician assistant, the application for approval or the approval of a supervising physician, or the application for approval or the approval of an approved program under this chapter shall be conducted in accordance with Chapter 5

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1 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
2 Code.”

3 6. Section 2227 of the Code states:

4 “(a) A licensee whose matter has been heard by an administrative law judge
5 of the Medical Quality Hearing Panel as designated in Section 11371 of the
6 Government Code, or whose default has been entered, and who is found guilty, or
7 who has entered into a stipulation for disciplinary action with the board, may, in
8 accordance with the provisions of this chapter:

9 “(1) Have his or her license revoked upon order of the board.

10 “(2) Have his or her right to practice suspended for a period not to exceed
11 one year upon order of the board.

12 “(3) Be placed on probation and be required to pay the costs of probation
13 monitoring upon order of the board.

14 “(4) Be publicly reprimanded by the board. The public reprimand may
15 include a requirement that the licensee complete relevant educational courses
16 approved by the board.

17 “(5) Have any other action taken in relation to discipline as part of an order
18 of probation, as the board or an administrative law judge may deem proper.

19 “(b) Any matter heard pursuant to subdivision (a), except for warning letters,
20 medical review or advisory conferences, professional competency examinations,
21 continuing education activities, and cost reimbursement associated therewith that
22 are agreed to with the board and successfully completed by the licensee, or other
23 matters made confidential or privileged by existing law, is deemed public, and
24 shall be made available to the public by the board pursuant to Section 803.1.”

25 7. Section 2234 of the Code states, in pertinent part:

26 “The board shall take action against any licensee who is charged with
27 unprofessional conduct. In addition to other provisions of this article,
28 unprofessional conduct includes, but is not limited to, the following:

1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
2 abetting the violation of, or conspiring to violate any provision of this chapter

3 “...

4 “(e) The commission of any act involving dishonesty or corruption that is
5 substantially related to the qualifications, functions, or duties of a physician and
6 surgeon.

7 “...”

8 8. Section 2238 of the Code states:

9 “A violation of any federal statute or federal regulation or any of the statutes or
10 regulations of this state regulating dangerous drugs or controlled substances constitutes
11 unprofessional conduct.”

12 9. Section 2239 of the Code states, in pertinent part:

13 “(a) The use or prescribing for or administering to himself or herself, of any
14 controlled substance; or the use of any of the dangerous drugs specified in Section
15 4022, or of alcoholic beverages, to the extent, or in such a manner as to be
16 dangerous or injurious to the licensee, or to any other person or to the public, or to
17 the extent that such use impairs the ability of the licensee to practice medicine
18 safely or more than one misdemeanor or any felony involving the use,
19 consumption, or self-administration of any of the substances referred to in this
20 section, or any combination thereof, constitutes unprofessional conduct. The
21 record of the conviction is conclusive evidence of such unprofessional conduct.

22 “...”

23 10. Section 4022 of the Code states, in pertinent part:

24 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use
25 in humans or animals, and includes the following:

26 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing
27 without prescription,’ ‘RX only,’ or words of similar import.

28 “...

1 “(c) Any other drug or device that by federal or state law can be lawfully dispensed
2 on prescription or furnished pursuant to Section 4006.”

3 11. Section 2261 of the Code states:

4 “Knowingly making or signing any certificate or other document directly or indirectly
5 related to the practice of medicine or podiatry which falsely represents the existence or
6 nonexistence of a state of facts, constitutes unprofessional conduct.”

7 12. Section 2262 of the Code states:

8 “Altering or modifying the medical record of any person, with fraudulent intent, or
9 creating any false medical record, with fraudulent intent, constitutes unprofessional
10 conduct.

11 “In addition to any other disciplinary action, the Division of Medical Quality or the
12 California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars
13 (\$500) for a violation of this section.”

14 13. Section 11153 of the Health and Safety Code states, in pertinent part,

15 “(a) A prescription for a controlled substance shall only be issued for a
16 legitimate medical purpose by an individual practitioner acting in the usual course of
17 his or her professional practice. The responsibility for the proper prescribing and
18 dispensing of controlled substances is upon the prescribing practitioner, but a
19 corresponding responsibility rests with the pharmacist who fills the prescription.
20 Except as authorized by this division, the following are not legal prescriptions: (1) an
21 order purporting to be a prescription which is issued not in the usual course of
22 professional treatment or in legitimate and authorized research; . . .

23 “...”

24 14. Section 11157 of the Health and Safety Code states, “No person shall issue a
25 prescription that is false or fictitious in any respect.”

26 15. Section 11170 of the Health and Safety Code states, “No person shall prescribe,
27 administer, or furnish a controlled substance for himself.”

28 16. Section 11173 of the Health and Safety Code states, in pertinent part:

“(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

“(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

“ ”
...

17. Section 11180 of the Health and Safety Code states:

“No person shall obtain or possess a controlled substance obtained by a prescription that does not comply with this division.”

18. Section 11368 of the Health and Safety Code states:

“Every person who forges or alters a prescription or who issues or utters an altered prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription, or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription, shall be punished by imprisonment in the county jail for not less than six months or more than one year, or in the state prison.”

COST RECOVERY

19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Prescribing or Administering a Controlled Substance to Himself)

20. Respondent has subjected his Physician Assistant License No. PA-18785 to disciplinary action under sections 3527, 2227, and 2234, as defined by section 2239, subdivision (a), of the Code, in that he has prescribed and administered a controlled substance to himself, as more particularly alleged hereinafter:

21. Between on or about December 17, 2014, through on or about August 3, 2015, Respondent worked as a physician assistant at US Healthworks Medical Group clinic (US Healthworks) in Santa Ana. While working at US Healthworks, Respondent worked with Randolph Jones, M.D. (Dr. Jones) and Steven Klompus, P.A. (PA Klompus). Prior to December 17, 2014, Respondent worked with both Dr. Jones and PA Klompus at the same clinic while under different ownership.

22. On or about July 7, 2014, Respondent filled a prescription for 30 tabs of Citalopram¹ 20 mg, with three refills, at the CVS pharmacy on Adams Ave. in Huntington Beach. The signature on the prescription identifies PA Klompus as the prescriber, but PA Klompus never authorized or signed the prescription.

23. On or about September 24, 2014, Respondent filled a prescription for Amoxicillin² and 28 tabs of Clarithromycin³ 500 mg, at the CVS pharmacy on Adams Ave. in Huntington Beach. The signature on the prescription identifies PA Klompus as the prescriber, but PA Klompus never authorized or signed the prescription.

24. On or about November 24, 2014, Respondent filled a prescription for 30 tabs of Alprazolam⁴ 1 mg at the CVS pharmacy on Adams Ave. in Huntington Beach. The signature on the prescription identifies Dr. Jones as the prescriber, but Dr. Jones never authorized or signed the prescription.

25. On or about December 4, 2014, Respondent filled a prescription for 60 tabs of Norco⁵ 10/325 mg at the CVS pharmacy on Beach Blvd. in Huntington Beach. The signature on the

¹ Citalopram (brand name Celexa) is an antidepressant (selective serotonin reuptake inhibitor) and is used to treat depression. It is a dangerous drug pursuant to Business and Professions Code section 4022.

² Amoxicillin is a penicillin antibiotic used to treat certain kinds of bacterial infections. It is a dangerous drug pursuant to Business and Professions Code section 4022.

³ Clarithromycin is used to treat bacterial infections affecting the skin and respiratory system. It is a dangerous drug pursuant to Business and Professions Code section 4022

⁴ Alprazolam (brand name Xanax) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

⁵ Norco is a brand name for the combination prescription drug containing acetaminophen and hydrocodone that is used to treat moderate to severe pain. It is a Schedule III controlled substance pursuant (continued...)

1 prescription identifies Dr. Jones as the prescriber, but Dr. Jones never authorized or signed the
2 prescription.

3 26. On or about December 28, 2014, Respondent filled a prescription for 60 tabs of
4 Alprazolam 1 mg at the CVS pharmacy on Beach Blvd. in Huntington Beach. The signature on
5 the prescription identifies Dr. Jones as the prescriber, but Dr. Jones never authorized or signed the
6 prescription.

7 27. On or about January 14, 2015, Respondent filled a prescription for 60 tabs of Norco
8 10/325 mg at the CVS pharmacy on Beach Blvd. in Huntington Beach. The signature on the
9 prescription identifies Dr. Jones as the prescriber, but Dr. Jones never authorized or signed the
10 prescription.

11 28. On or about January 28, 2015, Respondent filled a prescription for 60 tabs of Norco
12 10/325 mg at the CVS pharmacy on S. Main St. in Santa Ana. The signature on the prescription
13 identifies Dr. Jones as the prescriber, but Dr. Jones never authorized or signed the prescription.

14 29. On or about February 6, 2015, Respondent filled a prescription for 90 tabs of Norco
15 10/325 mg at the CVS pharmacy on Beach Blvd. in Huntington Beach. The signature on the
16 prescription identifies Dr. Jones as the prescriber, but Dr. Jones never authorized or signed the
17 prescription.

18 30. On or about July 8, 2015, Respondent attempted to fill another Norco prescription at
19 CVS that he had written for himself, and signed Dr. Jones' name as the prescriber. The
20 pharmacist refused to fill the prescription and informed Respondent that she would have to verify
21 the prescription with Dr. Jones. That day, Respondent approached Dr. Jones in the parking lot at
22 US Healthworks, and admitted to Dr. Jones that he had written himself a prescription for Norco
23 and used Dr. Jones' signature. Sometime after that meeting, Dr. Jones' reported the incident to
24 the Regional Medical Director at US Healthworks.

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26
27 (...continued)

28 to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and
Professions Code section 4022.

31. On or about July 14, 2015, Respondent sent an email to the Director of Employee Relations at US Healthworks, and admitted he had signed a prescription under Dr. Jones' name. Respondent further admitted to being dependent on prescription medication.

32. On or about August 3, 2015, Respondent resigned from US Healthworks.

33. On or about September 9, 2015, Respondent filled a prescription for 30 tabs of Norco 10/325 mg and 30 tabs of Sertraline⁶ 50 mg with two refills at the CVS pharmacy on Alton Pkwy. In Irvine. The signature on the prescription identifies Dr. Jones as the prescriber, but Dr. Jones never authorized or signed the prescription.

SECOND CAUSE FOR DISCIPLINE

(Violation of State Laws Regulating Dangerous Drugs and/or Controlled Substances)

34. Respondent has further subjected his Physician Assistant License No. PA-18785 to disciplinary action under sections 3527, 2227 and 2234, as defined by section 2238, of the Code, in that he has violated a state law or laws regulating dangerous drugs and/or controlled substances, as more particularly alleged in paragraphs 20 through 33 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Dishonesty or Corruption)

35. Respondent has further subjected his Physician Assistant License No. PA-18785 to disciplinary action under sections 3527, 2227 and 2234, as defined by section 2234, subdivision (e), of the Code, in that he has committed an act or acts of dishonesty or corruption, as more particularly alleged in paragraphs 20 through 33, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(False Representations)

36. Respondent has further subjected his Physician Assistant License No. PA-18785 to disciplinary action under sections 3527, 2227 and 2234, as defined by section 2261, of the Code,

⁶ Sertraline is an antidepressant (selective serotonin reuptake inhibitor) and is used to treat depression. It is a dangerous drug pursuant to Business and Professions Code section 4022.

1 in that he has knowingly made or signed a certificate or document directly or indirectly related to
2 the practice of medicine which falsely represented the existence or nonexistence of a
3 state of facts, as more particularly alleged in paragraphs 20 through 33, above, which are hereby
4 incorporated by reference and realleged as if fully set forth herein.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Creation of False Medical Records, with Fraudulent Intent)**

7 37. Respondent has further subjected his Physician Assistant License No. PA-18785 to
8 disciplinary action under sections 3527, 2227 and 2234, as defined by section 2262, of the Code,
9 in that he created false medical records with fraudulent intent, as more particularly alleged in
10 paragraphs 20 through 33, above, which are hereby incorporated by reference and realleged as if
11 fully set forth herein.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Physician Assistant Board issue a decision:

15 1. Revoking or suspending Physician's Assistant Certificate No. PA-18785, issued to
16 Respondent, Dan Gerardo Raphael, P.A.;

17 2. Ordering Respondent Dan Gerardo Raphael, P.A., to pay the Physician Assistant
18 Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business
19 and Professions Code section 125.3;

20 3. Ordering Respondent Dan Gerardo Raphael, P.A., to pay the Physician Assistant
21 Board of California the costs, if placed on probation, of probation monitoring; and

22 4. Taking such other and further action as deemed necessary and proper.

23
24 DATED: July 5, 2018


25 MAUREEN L. FORSYTH
26 Executive Officer
27 Physician Assistant Board
28 Department of Consumer Affairs
State of California
Complainant

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